

STATE OF MICHIGAN
COURT OF APPEALS

MARCELINE WARNER, Personal Representative
of the Estate of YVONNE M. WARNER,
Deceased,

Plaintiff-Appellant,

v

KAREN A. BOS,

Defendant-Appellee.

UNPUBLISHED
February 21, 2003

No. 238929
Oakland Circuit Court
LC No. 00-024889-CZ

Before: Kelly, P.J. and White and Hoekstra, JJ.

PER CURIAM.

Plaintiff appeals as of right from a trial court order quieting title to the decedent's land in defendant's favor. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I. Basic Facts

This action involves a dispute over a large parcel of property in Lake County. Plaintiff's father-in-law originally purchased the property in 1955. In 1964, the property was quitclaimed to plaintiff and her husband, the decedent's parents. The decedent received title to the property from her parents in 1988. In 1997, the decedent transferred the property to herself and defendant as joint tenants with full rights of survivorship.

At trial, plaintiff contended that the 1988 transfer was intended as a conditional gift. The property had been in plaintiff's family for many years and when the property was transferred to decedent, it was on the condition that it always stay in plaintiff's family. Plaintiff further argued that the 1997 conveyance was void because it and the 1988 transfers were conditional gifts. The trial held:

For purposes of argument, the Court will consider both the 1988 deed and 1997 deed as gifts.

The 1988 deed meets the first three criteria of a gift, the owner intended to pass title, there was delivery and the donee accepted.

There was some sketchy parole [sic] evidence at trial that the donors set a condition that the land remain in the Warner family. This evidence, when balanced with the very clear evidence of the written deed, does not come even close to sustaining the plaintiff's burden of proof on this claim; thus, the Court will hold that the 1988 deed was a valid and unconditional transference of the subject property.

Yvonne Warner, therefore, had the capacity to make the 1997 deed to herself and Ms. Bos.

The only other question is whether the 1997 deed was a conditional gift and ought to be voided.

First of all, it meets the first three criteria of a gift, as I indicated above. But there was absolutely no credible evidence that this was a conditional gift; therefore, the Court will find in favor of defendant, Karen Bos, and will dismiss the plaintiff's case.

II. Standard of Review and Applicable Law

"Actions to quiet title are equitable; therefore, the trial court's holdings are reviewed de novo." *Killips v Mannisto*, 244 Mich App 256, 258; 624 NW2d 224 (2001). However, the court's factual findings are reviewed for clear error. *Id.* A finding is clearly erroneous when this Court is left with a definite and firm conviction that a mistake has been made. *In re Erickson Estate*, 202 Mich App 329, 331; 508 NW2d 181 (1993). This Court "will defer to the [trial] court on matters of credibility, and will give broad deference to findings made by the [trial] court because of its unique vantage point regarding witnesses, their testimony, and other influencing factors not readily available to the reviewing court." *Id.*

"In order for a gift to be valid, three elements must be satisfied: (1) the donor must possess the intent to transfer title gratuitously to the donee, (2) there must be actual or constructive delivery of the subject matter to the donee, unless it is already in the donee's possession, and (3) the donee must accept the gift." *Davidson v Bugbee*, 227 Mich App 264, 268; 575 NW2d 574 (1997).

It is essential that title pass to the donee. As to delivery, it must be unconditional and it may be either actual or constructive; the property may be given to the donee or to someone for him. Such delivery must place the property within the dominion and control of the donee. This means that a gift *inter vivos* must be fully consummated during the lifetime of the donor and must invest ownership in the donee beyond the power of recall by the donor. As to acceptance, it is said that the donee is presumed to have accepted the gift where such is beneficial. [*Osius v Dingell*, 375 Mich 605, 611; 134 NW2d 657 (1965) (citations omitted).]

"A gift . . . may be conditioned on the performance of some act by the donee, and if the condition is not fulfilled the donor may recover the gift." *Meyer v Mitnick*, 244 Mich App 697,

701; 625 NW2d 136 (2001), quoting *Brown v Thomas*, 127 Wis 2d 318, 326-327; 379 NW2d 868 (Wis App, 1985).

III. Analysis

Plaintiff first contends that the trial court erred in finding the 1988 gift to the decedent was not conditional. Plaintiff argues that the initial transfer to decedent was made with the “understanding” that the property would remain in the family. Plaintiff further contends that because this condition was violated, the decedent’s subsequent transfer to herself and defendant was void. We disagree.

Plaintiff and her husband intended to pass title to their daughter and did so by the execution and delivery of an unequivocal quitclaim deed. Decedent accepted the property and the deed was recorded. As the trial court noted, the “sketchy” evidence relied upon by plaintiff to establish any condition on the transfer was insufficient to overcome the “very clear evidence of the written deed.” The trial court did not clearly err in finding that the 1988 transfer of the property to decedent was unconditional.¹

Plaintiff next contends that the decedent’s 1997 gift to defendant was made on the condition that defendant and the decedent build a home on the property and move there. Plaintiff argues that the condition was not met and the property reverts to the decedent’s estate. We disagree. Defendant testified that the decedent never mentioned such a condition, plaintiff herself did not know of one, and it was not mentioned in the 1997 deed. Although the transfer was made in conjunction with the decedent and defendant’s retirement plans, the facts and circumstances surrounding the conveyance did not establish by a preponderance of the evidence that fulfillment of those plans was a condition of the transfer. Therefore, the trial court did not clearly err in finding that the 1997 gift was unconditional.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Helene N. White
/s/ Joel P. Hoekstra

¹ Plaintiff has not cited any authority to support her claim that a donee’s violation of a condition on a gift renders a subsequent transfer by the donee void and thus has not preserved the issue for appeal. *Price v Long Realty, Inc*, 199 Mich App 461, 467; 502 NW2d 337 (1993).